Chan Whye & Sons Contractors (suing as a firm) v Sarawak Shell Bhd

HIGH COURT (MIRI) — SUIT NO 22–31 OF 1998 (MR)
STEPHEN CHUNG J
24 MARCH 2014

Civil Procedure — Cost — Getting up — Taxation — Appeal against decision of senior assistant registrar in awarding getting up costs — Whether getting up fees awarded by senior assistant registrar grossly inadequate — Whether applied correct principles in arriving at decisions — Whether senior assistant registrar erred in law and/or in fact — Rules of the High Court 1980 O 59 Part X, Appendix I

The parties appeared before the deputy registrar ('the DR') for assessment of damages in this suit. After hearing the plaintiff's four witnesses and the submissions of the parties, the DR dismissed the plaintiffs claim for exemplary damages but awarded RM80,559.36 as damages to the plaintiff with costs to be taxed unless agreed. By a notice of taxation with a bill of costs annexed thereto, the plaintiff asked for costs of RM83,438.60 and out of pocket expenses of RM461.60. Item 1 of the bill of costs was in respect of the getting up of RM80,000. The senior assistant registrar ('the SAR') allowed the getting up of RM5,000 only and disallowed items 62–66, 83–92, 117–121, 135 and 150–155. The plaintiff appealed against the decision of the SAR. The plaintiff alleged that the SAR did not state which principle of law or the factors he had applied in his ruling although he referred to O 59 Part X, Appendix I of the Rules of the High Court 1980. The plaintiff submitted that the taxation of the SAR suggested that it was unimportant or petty and that the SAR was rather unhappy that his earlier decision had been set aside.

Held, dismissing the appeal with costs of RM500:

(1) The plaintiff did not submit on items 62–66, 83–92, 117–121,135, and 150–155 of the bill of costs. It appeared that the plaintiff had abandoned the appeal on these items. In any event, items 62–66, 83–92, 117–121 and 135 were in respect of documents downloaded from the internet which were ruled by the DR to be hearsay, irrelevant and not admissible in the assessment of damages. Similarly the DR had ruled that items 150–155 being the bundle of authorities cited by the plaintiff were irrelevant. Therefore, the SAR was correct in not allowing these costs in the taxation (see para 6).

(2) This court is familiar with the facts, issues, the law involved in this case and the time taken in the assessment of damages as the appeal by the

plaintiff against the DR's assessment of damages was heard by this court. Previously the plaintiff was awarded RM30,000 as costs for getting up for the trial in this action. The defendant had paid these costs to the plaintiff. Obviously, the getting up of RM80,000 was excessive and out of proportion to the award of damages of RM80,559.36. On the facts and circumstances of this case, there was no reason to disturb the quantum awarded in the taxation made by the SAR (see para 8).

[Bahasa Malaysia summary

Pihak-pihak berhadapan dengan timbalan pendaftar ('TP') untuk penilaian ganti rugi dalam tindakan ini. Selepas mendengar keempat-empat saksi plaintif dan hujahan pihak-pihak, TP menolak tuntutan plaintif untuk ganti rugi teladan tetapi mengawardkan sebanyak RM80,559.36 sebagai ganti rugi kepada plaintif dengan kos untuk ditetapkan kecuali dipersetujui. Melalui notis cukai dengan bil kos dilampirkan dengannya, plaintif memohon untuk kos sebanyak RM83,438.60 dan perbelanjaan poket sendiri sebanyak RM461.60. Item 1 bil kos adalah berkaitan kos penyediaan sebanyak RM80,000. Penolong kanan pendaftar (PKP) membenarkan kos penyediaan sebanyak RM5,000 sahaja dan tidak membenarkan item-item 62–66, 83–92, 117–121, 135 dan 150–155. Plaintif merayu terhadap keputusan PKP. Plaintif mendakwa bahawa PKP tidak menyatakan prinsip undang-undang yang mana atau faktor beliau mengguna pakai dalam perintahnya walaupun beliau merujuk kepada A 59 Bahagian X, Apendiks I Kaedah-Kaedah Mahkamah Tinggi 1980. Plaintif berhujah bahawa pencukaian PKP mencadangkan bahawa ia adalah tidak penting atau remeh-temeh dan bahawa PKP tidak berpuas hati dengan keputusannya yang terdahulu telah diketepikan.

Diputuskan, menolak rayuan dengan kos sebanyak RM500:

(1) Plaintif tidak menyerahkan item-item 62–66, 83–92, 117–121,135, dan 150–155 bil kos. Jelas plaintif telah meninggalkan rayuan ke atas item-item ini. Walau bagaimanapun, item-item 62–66, 83–92, 117–121 dan 135 adalah berkaitan dokumen-dokumen yang dimuat turun daripada internet yang diperintahkan oleh TP adalah khabar angin dengar, tidak relevan dan tidak boleh diterima dalam penilaian ganti rugi. TP juga memerintahkan bahawa item-item 150–155 sebagai ikatan autoriti yang dirujuk oleh plaintif adalah tidak relevan. Oleh itu, PKP adalah betul dalam tidak membenarkan kos-kos ini dalam pencukaian (lihat perenggan 6).

(2) Mahkamah adalah biasa dengan fakta, isu-isu, undang-undang yang terlibat dalam kes ini dan masa yang diambil dalam penilaian ganti rugi seperti yang dirayukan oleh plaintif terhadap penilaian DR terhadap ganti rugi didengar oleh mahkamah. Sebelum ini plaintif diawardkan dengan RM30,000 sebagai kos penyediaan untuk perbicaraan dalam tindakan ini. Defendan telah membayar kos ini kepada plaintif. Jelas, kos

penyediaan sebanyak RM80,000 adalah berlebihan dan tidak munasabah kepada award ganti rugi sebanyak RM80,559.36. Atas fakta dan keadaan kes ini, tidak ada sebab untuk campur tangan kuantum yang diawardkan dalam pencukaian yang dibuat oleh PKP (lihat perenggan 8).]

Notes

For cases on getting up, see 2(1) *Mallal's Digest* (4th Ed, 2014 Reissue) paras 2360–2373.

Cases referred to

Globaltech Enterprise Sdn Bhd v Commerce Assurance Bhd [2008] MLJU 949; [2014] 1 CLJ 517, HC (folld)

Legislation referred to

Rules of the High Court 1980 O 59 Part X, Appendix I

Tai Choi Yu (Tai Choi Yu & Co) for the plaintiff.
Patrick Liaw (Jimmy HT Wee & Co) for the defendant.

Stephen Chung J:

RULING

[1] The facts are as follows. The parties appeared before the deputy registrar ('the DR') for assessment of damages in the suit. On 18 November 2011, after hearing four witnesses called by the plaintiff and hearing submissions of the parties, the DR dismissed the plaintiffs claim for exemplary damages but awarded RM80,559.36 as damages to the plaintiff with costs to be taxed unless agreed.

[2] By a notice of taxation dated 19 December 2012, with a bill of costs annexed thereto, the plaintiff asked for costs of RM83,438.60 and out of pocket expenses of RM461.60. Item 1 of the bill of costs was in respect of getting up of RM80,000.

[3] On 21 November 2013, the senior assistant registrar ('the SAR') allowed the getting up of RM5,000 only and disallowed items 62–66, 83–92, 117–121, 135 and 150–155. The plaintiff appealed against the decision of the SAR.

[4] The plaintiff complained that the SAR did not say which principle of law or the factors he was applying in his ruling although he referred to O 59 Part X, Appendix I of the Rules of the High Court 1980. The plaintiff submitted that

the taxation of the SAR suggested that it was unimportant or petty and that the SAR was rather unhappy that his earlier decision had been set aside.

[5] The plaintiff referred to a motion before the Federal Court which was dismissed within ten minutes and costs of RM10,000 were awarded without the defendant's counsel uttering a word in rebuttal. Therefore the plaintiff submitted that the SAR had erred in awarding the costs of RM5,000 only to the plaintiff as being too low and unreasonable.

[6] Reading the written submissions of the plaintiff in this appeal, the plaintiff did not submit on items 62–66, 83–92, 117–121,135, and 150–155 of the bill of costs. It appeared that the plaintiff had abandoned the appeal on these items. In any event, items 62–66, 83–92, 117–121 and 135 were in respect of documents downloaded from the internet which were ruled by the DR to be hearsay, irrelevant and not admissible in the assessment of damages. Similarly the DR had ruled that Items 150–155 being bundle of authorities cited by the plaintiff were irrelevant. Therefore the SAR was correct in not allowing these costs in the taxation. The appeal in respect of these items is dismissed.

[7] I have given several rulings on taxations of costs. I adopt the reasons set out in those rulings, without the necessity to reproduce them nor to set out the principles herein: *Globaltech Enterprise Sdn Bhd v Commerce Assurance Bhd* [2008] MLJU 949; [2014] 1 CLJ 517.

[8] I have perused the bill of costs and read the ruling of the SAR in respect of the taxation. I am familiar with this case because I heard the appeal by the plaintiff against the assessment of damages by the DR. I am familiar with the facts, issues, the law involved and the time taken in the assessment of damages. Previously the plaintiff was awarded RM30,000 costs for getting up for the trial in this action. The defendant had paid these costs to the plaintiff. Obviously the getting up of RM80,000 was excessive and out of proportion to the award of damages of RM80,559.36.

[9] On the facts and circumstances of this case, there is no reason to disturb the quantum awarded in the taxation made by the SAR. The appeal is dismissed with costs of RM500 to be paid by the plaintiff to the defendant.

Appeal dismissed with costs of RM500.

Reported by Ashgar Ali Ali Mohamed